



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/142530

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 21, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 21, 2012, at Racine, Wisconsin.

The issue for determination is whether the agency properly considered the income of petitioner's ex-husband in deciding that petitioner was no longer eligible for FoodShare (FS) benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Christman, Lead FEP  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was receiving FS benefits when she reported that she and her daughter had rented a room from her ex-husband (the daughter's father) and was consequently living in the same house with him.

3. The agency obtained information as to the ex-husband's income and included his income in determining whether petitioner remained eligible for FS benefits. The household, comprised of petitioner, her ex-husband and their daughter was found to be ineligible for FS benefits effective August 1, 2012 and a notice of decision to that effect was sent to petitioner on June 22, 2012 (Exhibit 1).

### **DISCUSSION**

FoodShare (FS) is a joint federal-state program that is designed to improve the overall health of lower – income households by enhancing their access to food. Eligibility and benefit levels are largely determined by household size and income.

The basic unit for making determinations as to FS eligibility is the household, defined as,

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 CFR §273.01(a). Certain persons who live with others, “must be considered as customarily purchasing food and preparing meals with the others,” even if they do not actually do so, 7 CFR §273.1(b)(1). This group includes, “A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s),” 7 CFR §273.1(b)(1)(ii). The presence of petitioner's daughter in the home with both of her parents draws both of them into the same food group even though the parents are divorced and petitioner is only renting a room and not actually sharing or preparing food with her ex-husband, *FoodShare Handbook*, ¶3.3.1.3.

Petitioner did not dispute the amount of household income used for making the eligibility determination. On that basis, the agency correctly determined that the household did not qualify due to excess income.

### **CONCLUSIONS OF LAW**

A child's biological parents must be included in the same household as the child for purposes of determining eligibility for FS.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and hereby is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of September, 2012

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Michael A. Greene  
Administrative Law Judge  
Division of Hearings and Appeals

c: Racine County Department of Human Services - email  
Department of Health Services - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 14, 2012.

Racine County Department of Human Services  
Division of Health Care Access and Accountability